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**CHAPTER**

**Statement of the Sierra Club Michigan Chapter regarding  
House Bills 5711, 5712, 5713, 5714, 5715 and 5716  
Before the House Agriculture Committee  
February 21, 2006  
Presented by State Director Anne Woiwode**

The Sierra Club urges the members of the House Agriculture Committee to VOTE NO on HB 5711, 5712, 5713, 5714, 5715 and 5716, the Animal Factory Polluter Bills. These bills:

- pose great risks to Michigan's drinking water sources, both groundwater and surface waters, including inland lakes and streams and the Great Lakes, as well as threatening air quality and posing a serious risk of unfunded cleanups of contaminated sites;
- threaten the public health, property values and the economic well-being of family farmers and other rural residents;
- further victimize the neighbors of animal factories who already suffer from the pollution these facilities emit;
- divert pollution prevention funds from municipalities and nonprofit organizations to subsidize animal factories, one of the most heavily taxpayer subsidized and least regulated industries in Michigan; and
- threaten Michigan's delegated authority over the federal Clean Water Act, putting all industries with water pollution permits at risk.

Michigan has taken steps since 2002 to bring the state's approximately 200 concentrated animal feeding operations (CAFOs) into compliance with laws to protect water quality, air quality and the public health. The Michigan Agricultural Environmental Assurance Program (MAEAP) has helped move the industry in the right direction by encouraging the use of voluntary practices to help prevent pollution.

However MAEAP is not a substitute for strong and effective environmental laws to properly regulate CAFOs, and will never provide the protections for Michigan's people and resources that are needed. For example, at least six MAEAP verified CAFOs have been cited by the Department of Environmental Quality (MDEQ) or the US Environmental Protection Agency (EPA) for violations of environmental laws and have been required to obtain NPDES permits. An additional eleven MAEAP verified CAFOs investigated by the Sierra Club have been reported to the MDEQ for serious water quality violations. Sierra Club strongly suspects that other MAEAP verified CAFOs have not

been identified as violating environmental laws only because there are too few staff or resources for the MDEQ to properly investigate and identify violations.

HB 5711 and 5712 seek to place a blanket of immunity from all state environmental laws over MAEAP verified CAFOs on the erroneous assumption these facilities are in compliance unless an operator can be shown to have “knowingly and recklessly caused impairment of the natural resources of this state.” Equally problematic, a redefinition of “agricultural storm water discharge” means that badly polluting CAFOs would be deemed to be in compliance with state environmental laws, even while violating the federal Clean Water Act. As a result, the claim that polluting CAFOs would be brought under regulations is simply not accurate.

This package of bills will move Michigan towards losing its delegated authority to administer the federal Clean Water Act in our state. These bills clearly violate Michigan’s EPA approved Clean Water Act program, jeopardizing the state’s delegated authority to run this program. Every business, from auto manufacturers to food processors, that has an NPDES permit will be hurt by passage of this package of bills, as would publicly owned waste water treatment facilities. Attached is a listing of some of the federal Clean Water Act regulations that would be violated through the passage of these bills. First and foremost, Michigan is required to prohibit discharges of pollutants from CAFOs and other point sources, which these bills would not do. Second, the state must have the legal authority to implement the provisions of the Clean Water Act, which this package of bills takes away.

HB 5714 is particularly disturbing because it is so clearly designed to intimidate the victims of CAFO pollution out of filing legitimate complaints with the MDEQ. This enormous barrier to public participation is a clear violation of Michigan’s federal delegation under the Clean Water Act. Not only is it a cruel and heartless proposal to threaten to fine the victims of the horrific pollution from CAFOs for trying to get their government to take action to protect property and health, it is prohibited under the Clean Water Act and its regulations. The state of Michigan is in fact required to encourage the “public effort in reporting violations” according to federal rules. Threatening to impose massive fines on the people harmed by pollution is the exact opposite of encouragement to come forward and report violations.

It is time for the Michigan Legislature to start listening to the family farmers and rural residents who are being badly hurt by pollution from CAFOs and the weak or non-existent protection of their health and property rights. CAFOs are a small percentage of Michigan’s agricultural operations, but they pose a huge threat to the communities where they are found, as well as the people downstream who swim, fish and drink the waters contaminated with their wastes. And the damage they cause will go on for decades, both by harming our state’s natural resources and destroying the rural economies at the heart of Michigan’s extraordinarily diverse agriculture. It is time to treat CAFOs like what they are: industrial operations that must meet the same environmental laws and requirements of every other industry in Michigan.

## **House Bills 5711, 5712 and 5714 Would Violate the Federal Clean Water Act and Threaten Michigan's Delegation from the US Environmental Protection Agency**

Michigan must maintain compliance with its delegated authority from the US Environmental Protection Act under the federal Clean Water Act in order to continue to administer the program in Michigan. In a July 1, 2005, the US EPA approved the MDEQ National Pollutant Discharge Elimination System (NPDES) program for concentrated animal feeding operations (CAFOs). The proposed legislation threatens Michigan's delegated programs by failing to meet the following federal regulations for the Clean Water Act. Withdrawal of Michigan's Clean Water Act program would affect ALL permitted facilities, not just CAFOs. A petition submitted by Sierra Club to US EPA in 1999 which sought withdrawal of Michigan's program based on its failure to comply with the federal requirements regarding CAFOs is still unresolved, although the program approved by USEPA in 2005 was expected to lead to a resolution of that petition if Michigan does not undermine MDEQ's program through these proposed legislative changes.

### **40CFR123 --STATE PROGRAM REQUIREMENTS**

Sec. 123.1(g)(1) Except as may be authorized pursuant to paragraph (g)(2) of this section or excluded by Sec. 122.3, the State program must prohibit all point source discharges of pollutants, ... within the State's jurisdiction except as authorized by a permit in effect under the State program or under section 402 of CWA...

#### **Sec. 123.25 Requirements for permitting.**

(a) All State Programs under this part must have legal authority to implement each of the following provisions and must be administered in conformance with each, except that States are not precluded from omitting or modifying any provisions to impose more stringent requirements:

- (4) Sec. 122.21 (a)-(b), (c)(2), (e)-(k), and (m)-(p), and (q)--  
(Application for a permit);
- (6) Sec. 122.23--(Concentrated animal feeding operations);
- (9) Sec. 122.26--(Storm water discharges);

#### **Sec. 122.21 Application for a permit** (applicable to State programs, see Sec. 123.25).

(a) Duty to apply. (1) Any person who discharges or proposes to discharge pollutants ... must submit a complete application to the Director in accordance with this section and part 124 of this chapter.

(2) Application Forms: (i) All applicants for EPA-issued permits must submit applications on EPA permit application forms. ...

(C) Applicants for concentrated animal feeding operations or aquatic animal production facilities must submit Form 2B.

(iv) Applicants for State-issued permits must use State forms which must require at a minimum the information listed in the appropriate paragraphs of this section.

(b) Who applies? When a facility or activity is owned by one person but is operated by another person, it is the operator's duty to obtain a permit.

(c) Time to apply. (1) Any person proposing a new discharge, shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Director...

#### **Sec. 122.23 Concentrated animal feeding operations** (applicable to State NPDES programs, see Sec. 123.25).

(a) Permit requirement. Concentrated animal feeding operations are point sources subject to the NPDES permit program.

**Sec. 123.26 Requirements for compliance evaluation programs.**

(a) State programs shall have procedures for receipt, evaluation, retention and investigation for possible enforcement of all notices and reports required of permittees and other regulated persons (and for investigation for possible enforcement of failure to submit these notices and reports)...

(b) State programs shall have inspection and surveillance procedures to determine, independent of information supplied by regulated persons, compliance or noncompliance with applicable program requirements. The State shall maintain:...

(4) Procedures for receiving and ensuring proper consideration of information submitted by the Public about violations. Public effort in reporting violations shall be encouraged, and the State Director shall make available information on reporting procedures.

**Sec. 123.27 Requirements for enforcement authority.**

(d) Any State administering a program shall provide for public participation in the State enforcement process by providing either:

(1) Authority which allows intervention as of right in any civil or administrative action to obtain remedies specified in paragraphs (a)(1), (2) or (3) of this section by any citizen having an interest which is or may be adversely affected; or

(2) Assurance that the State agency or enforcement authority will:

(i) Investigate and provide written responses to all citizen complaints submitted pursuant to the procedures specified in

Sec. 123.26(b)(4);

(ii) Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and

(iii) Publish notice of and provide at least 30 days for public comment on any proposed settlement of a State enforcement action.

**Sec. 123.63 Criteria for withdrawal of State programs.**

(a) In the case of a sewage sludge management program, references in this section to 'this part' will be deemed to refer to 40 CFR part

501. The Administrator may withdraw program approval when a State program no longer complies with the requirements of this part, and the State fails to take corrective action. Such circumstances include the following:

(1) Where the State's legal authority no longer meets the requirements of this part, including:...

(ii) Action by a State legislature or court striking down or limiting State authorities.

## **MICHIGAN ENVIRONMENTAL LAWS AND CONCENTRATED ANIMAL FEEDING OPERATIONS**

Concentrated animal feeding operations (CAFOs) are defined under the federal Clean Water Act as operations in which 1000 beef cattle, 700 dairy cows, 2,500 hogs, 55,000 turkeys or the equivalent waste producing livestock numbers are confined for at least 45 days per year in an area with no vegetation (e.g. barns). Despite their immense size and enormous pollution potential, Concentrated Animal Feeding Operations are treated differently than other industries when it comes to pollution and land use laws.

### **AIR POLLUTION:**

The Natural Resources and Environmental Protection Act or NREPA (PA 451 of 1994 as amended) says "*Air pollution does not mean those usual and ordinary odors associated with a farm operation if the person engaged in the farm operation is following generally accepted agricultural and management practices.*" MCL 324.5501 (b)

Generally accepted agricultural and management practices or GAAMPs are defined in the Michigan Right to Farm Act (PA 93 of 1981 as amended) as "*those practices as defined by the Michigan commission of agriculture.*" MCL 286.472(d)

The Director of the Department of Agriculture "*shall investigate all complaints involving a farm or farm operation, including, but not limited to, complaints involving the use of manure and other nutrients, agricultural waste products, dust, noise, odor, fumes, air pollution, surface water or groundwater pollution, food and agricultural processing by-products, care of farm animals and pest infestations.*" MCL 286.474 (1)

"*The commission and the director shall enter into a memorandum of understanding with the director of the department of environmental quality. The investigation and resolution of environmental complaints concerning farms or farm operations shall be conducted in accordance with the memorandum of understanding.*" MCL 286.474(2)

### **GROUNDWATER QUALITY:**

R 323.2210 Items permitted to be discharged without permit.

Rule 2210. A person may discharge the following without a permit that would otherwise be required by part 31 if the discharge meets the requirements of R 323.2204:

(f) A discharge from an animal feeding operation that has less than 5,000 animal units if the discharge is determined by the director of the department of agriculture or his or her designated representative, to be in accordance with generally accepted agricultural and management practices, as defined in Act No. 93 of the Public Acts of 1981, as amended, being ??286.471 to 286.474 of the Michigan Compiled Laws, and known as the Michigan right to farm act. For purposes of this rule, 5,000 animal units is equal to 5,000 head of slaughter or feeder cattle, 3,500 mature dairy cattle, 12,500 swine weighing more than 25 kilograms or approximately 55 pounds, 50,000 sheep or lambs, 2,500 horses, 275,000 turkeys, 150,000 laying hens or broilers, or 25,000 ducks. An

*animal feeding operation is a lot or facility, or series of lots or facilities under 1 ownership which are adjacent to one another or which use a common area or system for the disposal of wastes, that meets both of the following conditions:*

- (i) Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of 45 calendar days or more in any 12-month period.*
  - (ii) Crops, vegetation, forage growth, or postharvest residues are not sustained in the normal growing season over the portion of the lot or facility where animals are confined.*
- (from MDEQ's Environmental Response Division administrative rules)*

#### **LOCAL CONTROL:**

*"Beginning June 1, 2000, except as otherwise provided in this section, it is the express legislative intent that this act preempt any local ordinance, regulation, or resolution that purports to extend or revise in any manner the provisions of this act or generally accepted agricultural and management practices developed under this act. Except as otherwise provided in this section, a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts in any manner with this act or generally accepted agricultural and management practices developed under this act." MCL 286.474(6)*